

House Daily Reader

Tuesday, February 24, 2004

Bills Included				
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State of South Dakota

SEVENTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2004

659J0043

SENATE ENGROSSED NO. **HB 1001** - 02/21/2004

Introduced by: Representatives Heineman, Bartling, Bradford, Buckingham, Deadrick (Thomas), Dykstra, Elliott, Juhnke, LaRue, McLaughlin, Peterson (Jim), Solum, and Teupel and Senators Duenwald and Koskan at the request of the Interim Committee on School District Educational Equality and Organization

1 FOR AN ACT ENTITLED, An Act to provide for a basic high school program and a
2 recommended high school program and to require most students to complete the
3 recommended one.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 13-1-12.1 be amended to read as follows:

6 13-1-12.1. The South Dakota Board of Education shall ~~adopt~~ promulgate rules pursuant to
7 chapter 1-26 to establish standards for the classification and accreditation of schools within this
8 state, to establish standards for preparation of certified personnel, to set forth procedures for
9 determining the eligibility of school districts to receive state foundation aid effective January 1,
10 1997, to adopt policies and rules necessary to establish standards and procedures for
11 vocation-technical education and to establish ~~minimum~~ curriculum requirements for both a
12 basic high school program and for a recommended high school program for all public and
13 nonpublic schools within the state. Both programs shall include a rigorous high school
14 curriculum, and the recommended high school program shall be more academically challenging



1 in the areas of mathematics and science than the basic high school program. Both programs
2 shall enhance and may not diminish the academic preparation necessary for students to complete
3 high school. The requirements of the basic program shall be aligned to the academic content
4 standards developed pursuant to § 13-3-48 and shall, at a minimum, include the content
5 standards tested pursuant to § 13-3-55.

6 Section 2. That chapter 13-33 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 For students entering the ninth grade in the 2006-2007 school year and thereafter, a school
9 district shall require that each student enrolls in courses of instruction necessary to complete the
10 recommended high school program established by the State Board of Education pursuant to
11 section 1 of this Act. However, a student may be excused from taking courses of instruction
12 necessary to complete the recommended high school program if the student's parent or guardian
13 and a school counselor or school administrator agree that the student should instead take courses
14 of instruction necessary to complete the basic high school program also established by the board
15 pursuant to section 1 of this Act. Any student who is seeking eligibility in the South Dakota
16 scholarship program established in § 13-55-30 and is therefore adhering to the high school
17 course requirements as provided in Board of Regents Policy Number 2:3(2)(F) as in effect on
18 January 1, 2003, meets the requirements of this section.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

733J0519

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1123** - 02/18/2004

Introduced by: Representatives Michels and Konold and Senators Knudson and Bogue

1 FOR AN ACT ENTITLED, An Act to authorize banks to be organized as limited liability
2 companies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That subdivision (1) of § 51A-1-2 be amended to read as follows:

5 (1) "Bank," any corporation or limited liability company, organized pursuant to chapter
6 47-34A, authorized under this title to engage in the business of banking or in the
7 combined business of a bank and trust company or in the combined business of a
8 bank with trust powers;

9 Section 2. That chapter 51A-3 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 A bank may be organized as a limited liability company. The commission shall promulgate
12 rules pursuant to chapter 1-26, consistent with Title 51A, for the organization, management,
13 extension of its charter, and general administration of a bank that is organized as a limited
14 liability company. The rules shall facilitate the organization and capital structure, the offering
15 of trust business and the ability to develop branch bank and drive-in facilities, the offering of



1 remote service banking and bank services, the acceptance of deposits and the making of
2 investments, the offering of safe deposit and safe keeping protocols, the making of loans, the
3 reorganization of the limited liability company bank, and the operation of a bank organized as
4 a limited liability company to operate on an equal and parity basis with a bank organized as a
5 corporation.

6 Section 3. That § 10-43-10.1 be amended to read as follows:

7 10-43-10.1. Net income, in the case of a financial institution, is taxable income as defined
8 in the Internal Revenue Code, as amended, and in effect on January 1, 2003, and reportable for
9 federal income tax purposes for the taxable year, but subject to the adjustments as provided in
10 §§ 10-43-10.2 and 10-43-10.3. If a financial institution has elected to file its federal tax return
11 pursuant to 26 USC § 1362(a), as amended, and in effect on January 1, 1997, net income shall
12 be computed in the same manner and in the same amount as if that institution had continued to
13 file its federal tax return without making the election and the financial institution shall continue
14 to be treated as a separate corporation for the purposes of this chapter. If a financial institution
15 is organized as a limited liability company, the limited liability company shall be treated as a
16 separate corporation for the purpose of this chapter.

17 Section 4. That § 10-43-10.3 be amended by adding thereto a NEW SUBDIVISION to read
18 as follows:

19 For those financial institutions organized as limited liability companies, imputed federal
20 income taxes in an amount equal to the taxes that would have been paid on net income as
21 defined in § 10-43-10.1 had the financial institution elected to file as a subchapter C corporation
22 under the Internal Revenue Code.

23 Section 5. That § 47-34A-211 be amended to read as follows:

24

1 47-34A-211. (a) A limited liability company, and a foreign limited liability company
2 authorized to transact business in this state, except a bank organized pursuant to section 2 of this
3 Act, shall deliver to the secretary of state for filing an annual report that sets forth:

- 4 (1) The name of the company and the state or country under whose law it is organized;
- 5 (2) The address of its registered office and the name and address of its registered agent
6 for service of process in this state;
- 7 (3) The address of its principal office;
- 8 (4) The names and business addresses of any managers;
- 9 (5) The dollar amount of the total agreed contributions to the limited liability company.

10 (b) Information in an annual report must be current as of the date the annual report is signed
11 on behalf of the limited liability company.

12 (c) The first annual report must be delivered to the secretary of state concurrent with the
13 filing of the articles of organization. Subsequent annual reports must be delivered to the
14 secretary of state before the first day of the second month following the anniversary month of
15 the filing date.

16 (d) If an annual report does not contain the information required in subsection (a) or the fees
17 required by § 47-34A-212, the secretary of state shall promptly notify the reporting limited
18 liability company or foreign limited liability company and return the report to it for correction.
19 If the report is corrected to contain the information required in subsection (a) or the fees
20 required by § 47-34A-212 and delivered to the secretary of state within thirty days after the
21 effective date of the notice, it is timely filed.

22 Section 6. That § 51A-1-2 be amended by adding thereto NEW SUBDIVISIONS to read as
23 follows:

24 "Articles of incorporation," articles of incorporation for a bank organized by incorporators

1 as a corporation pursuant to chapters 47-2 to 47-9, inclusive, and articles of organization for a
2 bank organized by organizers or members as a limited liability company pursuant to chapter 47-
3 34A;

4 "By-laws," by-laws for a bank organized by incorporators as a corporation pursuant to
5 chapters 47-2 to 47-9, inclusive, and operating agreement for a bank organized by organizers
6 or members as a limited liability company pursuant to chapter 47-34A;

7 "Stockholder," a shareholder of a bank organized by incorporators as a corporation pursuant
8 to chapters 47-2 to 47-9, inclusive, and a member for a bank organized by organizers or
9 members as a member as a limited liability company pursuant to chapter 47-34A;

10 "Board of directors," board of directors for a bank organized by incorporators as a
11 corporation pursuant to chapters 47-2 to 47-9, inclusive, and a manager for a manager-managed
12 bank or a member for a member-managed bank organized as a limited liability company
13 pursuant to chapter 47-34A;

14 "Stock," shares for a bank organized by incorporators as a corporation pursuant to chapters
15 47-2 to 47-9, inclusive, and member equity for a bank organized as a limited liability company
16 pursuant to chapter 47-34A;

17 "Dividends," distributions for a corporation organized by incorporators as a corporation
18 pursuant to chapters 47-2 to 47-9, inclusive, and distributions for a bank organized by
19 organizers or members as a limited liability company pursuant to chapter 47-34A.

20 Section 7. That § 51A-3-2 be amended to read as follows:

21 51A-3-2. ~~The~~ For a bank organized as a corporation, the articles of incorporation of a bank
22 ~~corporation shall state, and for a bank organized as a limited liability company, the articles of~~
23 organization of a bank shall state:

24 (1) That the corporation or limited liability company is formed for the purpose of

1 engaging in the business of banking, or as a bank and trust company, or as a bank and
2 trust department;

3 (2) The period for which such corporation or limited liability company is organized, not
4 exceeding twenty years.

5 The name of such bank shall be different from the name of any other bank or trust company
6 in the county of its place of business. ~~Its~~ The capital stock of a bank organized as a corporation
7 shall be divided into shares of not less than ten nor more than one hundred dollars each. The
8 members' equity of a bank organized as a limited liability company shall be divided into units
9 of not less than ten nor more than one hundred dollars each.

10 Section 8. That § 51A-3-5 be amended to read as follows:

11 51A-3-5. ~~The~~ For a bank organized as a corporation, the original issue of bank stock, and
12 for a bank organized as a limited liability company, the original issue of members' equity, shall
13 be sold at a price of not less than twenty percent in excess of its par value and paid for in full
14 in lawful money of the United States. The excess over the par value shall be credited on the
15 books of the bank to the surplus.

16 Section 9. That § 51A-3-6 be amended to read as follows:

17 51A-3-6. One-tenth of the net profit for any dividend period shall be carried to the surplus
18 fund until such fund shall amount to twenty percent of the capital stock or members' equity. Any
19 losses sustained in excess of undivided profits may be charged to the surplus account, but no
20 dividends shall thereafter be declared or paid until the surplus fund shall amount to twenty
21 percent of the capital stock or members' equity.

22 Section 10. That § 51A-5-6 be amended to read as follows:

23 51A-5-6. It is lawful for any national bank to engage in trust business in this state to the
24 extent authorized by the laws of the United States, without incorporating or organizing under

1 the laws of this state, but ~~they~~ a national bank shall otherwise comply with and be subject to all
2 laws of this state which are applicable to state banks engaged in trust business including such
3 examinations as may be deemed necessary, except that the authority of the commission and the
4 director shall apply to their trust business only. The director may accept in lieu of an
5 examination conducted under ~~his~~ the director's direction, any report of examination conducted
6 by the appropriate federal regulatory agency.

7 Section 11. That § 51A-12-2 be amended to read as follows:

8 51A-12-2. Except as otherwise provided in this title, no bank organized as a corporation or
9 limited liability company may loan, or otherwise extend credit, to any corporation, partnership,
10 or individual, an amount greater than the sum of:

11 (1) Twenty percent of its capital stock or members' equity and surplus; and

12 (2) Ten percent of its undivided profit.

13 Such limit shall be determined for each calendar quarter on the basis of the bank's quarterly
14 report of condition for the immediately previous calendar quarter.

State of South Dakota

SEVENTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2004

273J0768

SENATE ENGROSSED NO. **HCR 1012** - 02/21/2004

Introduced by: Representatives Olson (Mel), Bartling, Garnos, Hackl, Hargens, Miles, Pederson (Gordon), Solum, Weems, and Wick and Senators McCracken, Apa, Dempster, Duxbury, Greenfield, Moore, Olson (Ed), and Symens

1 A CONCURRENT RESOLUTION, Requesting the Federal Communications Commission to
2 reconsider its order on local number portability.

3 WHEREAS, on November 24, 2003, landline local exchange carriers in the nation's largest
4 one hundred metropolitan areas began implementing local number portability between wireline
5 and wireless services, a system that allows subscribers to transfer their telecommunications
6 service from their incumbent landline local exchange carrier to a wireless telecommunications
7 company so the subscribers can receive calls on their wireless handsets using their existing local
8 telephone number; and

9 WHEREAS, the Federal Communications Commission (FCC) has by order mandated that
10 this local number portability be available throughout all areas of the United States on May 24,
11 2004; and

12 WHEREAS, under the FCC's order, the landline local exchange carrier may be responsible
13 for the costs of transporting all calls from the fixed location of a local telephone number to
14 wherever the subscriber's wireless handset may be located; and

15 WHEREAS, these costs may be substantial and unduly burdensome to the rural local



1 exchange carriers in South Dakota and their subscribers; and

2 WHEREAS, in ordering this local number portability the FCC failed to consider the
3 substantial differences existing between the local calling areas established for rural local
4 exchange carriers and the local calling areas offered by larger wireless carriers; and

5 WHEREAS, the FCC has not ordered that wireless carriers must provide similar local
6 number portability and allow for the transfer of wireless telephone numbers to a landline
7 telephone service and consequently, has not established a local number portability requirement
8 that is competitively neutral; and

9 WHEREAS, it was premature of the Federal Communications Commission to adopt its
10 order without first updating regulations for network access charges and offering reforms to its
11 existing federal universal service mechanisms:

12 NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Seventy-
13 ninth Legislature of the State of South Dakota, the Senate concurring therein, that the
14 Legislature of the State of South Dakota hereby affirms its support for the portability of local
15 phone numbers but requests the Federal Communications Commission to address concerns
16 about the negative impacts on rural, landline, local exchange carriers, and their subscribers; and

17 BE IT FURTHER RESOLVED, that the Federal Communications Commission be
18 encouraged to implement substantive changes to universal service and network access charges
19 that will keep telecommunications service affordable for consumers in all areas of South
20 Dakota.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0264

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 11** - 02/10/2004

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to rename the regents scholarship program the South
2 Dakota scholarship program and revise the annual scholarship amount.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-55-30 be amended to read as follows:

5 13-55-30. There is established the ~~regents~~ South Dakota scholarship program to be
6 administered by the Board of Regents. The purpose of the program is to allow South Dakota's
7 most academically accomplished high school graduates to receive an affordable education at
8 any university, college, or technical school that is accredited by the North Central Association
9 of Colleges and Schools and that provides instruction from a campus located in South Dakota.

10 Section 2. The term, regents scholarship program, wherever it is used in chapter 13-55
11 means South Dakota scholarship program. The Code Commission in future supplements and
12 revisions of chapter 13-55 of the South Dakota Codified Laws, shall substitute the term, South
13 Dakota scholarship program, and its derivatives for the term, regents scholarship program, and
14 its derivatives.

15 Section 3. That § 13-55-33 be amended to read as follows:



1 13-55-33. One-half of the annual scholarship award shall be paid to public institutions on
2 behalf of eligible students there enrolled or directly to eligible students enrolled at nonpublic
3 institutions at the beginning of the fall semester and the other half shall be paid at the beginning
4 of the spring semester. The amount of the annual award shall be as follows:

- 5 (1) One thousand dollars for the first year of attendance;
6 (2) One thousand dollars for the second year of attendance;
7 (3) One thousand ~~five hundred~~ dollars for the third year of attendance;
8 (4) ~~Two~~ One thousand ~~five hundred~~ dollars for the fourth year of attendance.

9 If, in any year, the total funds available to finance the scholarship awards are insufficient
10 to permit each eligible recipient to receive the full amount provided in this section, the available
11 moneys shall be prorated and distributed to each recipient in proportion to the entitlement
12 contemplated by this section. The total amount of the scholarship may not exceed ~~six~~ four
13 thousand dollars.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0358

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 34 - 02/10/2004

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on Commerce at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to require health carriers to offer certain deductible options
2 for certain health benefit plans and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any health carrier with any in force individual health benefit plan issued in accordance with
7 § 58-17-85 prior to August 1, 2003, shall offer, at the option of the insured, additional
8 deductible options of the following:

- 9 (1) One thousand dollars with a four thousand dollar out-of-pocket coinsurance
10 maximum;
- 11 (2) Three thousand dollars with a two thousand dollar out-of-pocket coinsurance
12 maximum;
- 13 (3) Five thousand dollars with no coinsurance; and
- 14 (4) Ten thousand dollars with a twelve thousand two hundred fifty dollar out-of-pocket



1 maximum, including the deductible.

2 Any additional deductible option, with the exception of the five thousand dollar option, shall
3 require that the insured be responsible for a twenty-five percent coinsurance. The premium rates
4 for these benefit plans shall be adjusted based upon the actuarial difference in benefits.

5 Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace,
6 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
7 effect from and after its passage and approval.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0261

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 54** - 02/18/2004

Introduced by: The Committee on Health and Human Services at the request of the
Department of Health

1 FOR AN ACT ENTITLED, An Act to provide for the inclusion of certain information on
2 required abortion reports and to clarify the confidential nature of the information.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-23A-34 be amended to read as follows:

5 34-23A-34. ~~No later than October 1, 1998, the~~ The Department of Health shall prepare a
6 reporting form for physicians which shall provide for the collection of the following
7 information:

8 (1) ~~The number of induced abortions performed in the previous calendar year, broken~~
9 ~~down by month, day, and year of the induced abortion;~~

10 (2) The method of abortion used for each induced abortion;

11 (3) The approximate gestational age, in weeks, of the unborn child involved in the
12 abortion;

13 (4) The age of the mother at the time of the abortion and, if the mother was younger than
14 sixteen years of age at the time the child was conceived, the age of the father, if
15 known;



- 1 (5) The specific reason for the induced abortion, including the following:
 - 2 (a) The pregnancy was a result of rape;
 - 3 (b) The pregnancy was a result of incest;
 - 4 (c) The mother could not afford the child;
 - 5 (d) The mother did not desire to have the child;
 - 6 (e) The mother's emotional health was at risk;
 - 7 (f) The mother would suffer substantial and irreversible impairment of a major
 - 8 bodily function if the pregnancy continued;
 - 9 (g) Other, which shall be specified;
- 10 (6) Whether the induced abortion was paid for by:
 - 11 (a) Private insurance;
 - 12 (b) Public health plan;
 - 13 (c) Other, which shall be specified;
- 14 (7) Whether coverage was under:
 - 15 (a) A-fee-for-service insurance company;
 - 16 (b) A managed care company; or
 - 17 (c) Other, which shall be specified;
- 18 (8) A description of the complications, if any, for each abortion and for the aftermath of
- 19 each abortion;
- 20 (9) The fee collected for performing or treating the abortion;
- 21 (10) The type of anesthetic, if any, used for each induced abortion;
- 22 (11) The method used to dispose of fetal tissue and remains;
- 23 (12) ~~Speciality~~ The specialty area of the physician;
- 24 (13) Whether the physician performing the induced abortion has been subject to license

1 revocation or suspension or other professional sanction; ~~and~~

2 (14) The number of previous abortions the mother has had;

3 (15) The number of previous live births of the mother, including both living and
4 deceased;

5 (16) The date last normal menses began for the mother;

6 (17) The name of physician performing the induced abortion;

7 (18) The name of hospital or physician office where the induced abortion was performed;

8 (19) A unique patient number that can be used to link the report to medical report for
9 inspection, clarification, and correction purposes but that cannot, of itself, reasonably
10 lead to the identification of any person obtaining an abortion; and

11 (20) Certain demographic information including:

12 (a) State, county, and city of occurrence of abortion;

13 (b) State, county, and city of residence of mother;

14 (c) Marital status of mother;

15 (d) Education status of mother;

16 (e) Race and hispanic origin of mother; and

17 (21) Certain Rhesus factor (Rh) information including:

18 (a) Whether the mother received the Rh test;

19 (b) Whether the mother tested positive for the Rh-negative factor;

20 (c) Whether the mother received a Rho(D) immune globulin injection.

21 Section 2. That § 34-23A-35 be amended to read as follows:

22 ~~34-23A-35. Any physician performing or treating abortions shall obtain a reporting form~~
23 ~~from the department and shall complete and submit the reporting form to the department no~~
24 ~~later than January fifteenth for any abortion performed or treated during the previous calendar~~

1 ~~year. By January fifteenth of each year, each physician who performed or treated an induced~~
2 ~~abortion during the previous calendar year or the physician's agent, shall submit to the~~
3 ~~department a copy of the physicians' information report described in § 34-23A-34 with the~~
4 ~~requested data entered accurately and completely.~~

5 Section 3. That § 34-23A-37 be amended to read as follows:

6 34-23A-37. ~~No later than October 1, 1998, the~~ The Department of Health shall prepare a
7 reporting form for physicians which shall provide for the collection of the following
8 information:

9 (1) The number of females to whom the physician provided the information described
10 in subdivision 34-23A-10.1(1); of that number, the number provided by telephone
11 and the number provided in person; and of each of those numbers, the number
12 provided in the capacity of a referring physician and the number provided in the
13 capacity of a physician who is to perform the abortion;

14 (2) The number of females to whom the physician provided the information described
15 in subdivision 34-23A-10.1(2); of that number, the number provided by telephone
16 and the number provided in person; of each of those numbers, the number provided
17 in the capacity of a referring physician and the number provided in the capacity of
18 a physician who is to perform the abortion; and of each of those numbers, the number
19 provided by the physician and the number provided by an agent of the physician;

20 (3) The number of females who availed themselves of the opportunity to obtain a copy
21 of the printed information described in § 34-23A-10.3, and the number who did not;
22 and of each of those numbers, the number who, to the best of the reporting
23 physician's information and belief, went on to obtain the abortion; and

24 (4) The number of abortions performed by the physician in which information otherwise

1 required to be provided at least twenty-four hours before the abortion was not
2 provided because an immediate abortion was necessary to avert the female's death,
3 and the number of abortions in which such information was not so provided because
4 a delay would create serious risk of substantial and irreversible impairment of a
5 major bodily function;

6 (5) The name of hospital or physician office;

7 (6) The date of report by month, day, and year; and

8 (7) A unique patient number that can be used to link the report to medical report for
9 inspection, clarification, and correction purposes but that cannot, of itself, reasonably
10 lead to the identification of any person obtaining an abortion.

11 Section 4. That § 34-23A-39 be amended to read as follows:

12 34-23A-39. ~~No later than October 1, 1998, the~~ The Department of Health shall prepare a
13 reporting form for physicians which shall provide for the collection of the following
14 information:

15 (1) The number of females or parents whom the physician or agent of the physician
16 provided the notice described in § 34-23A-7; and of each of those numbers, the
17 number of females who, to the best of the reporting physician's information and
18 belief, went on to obtain the abortion;

19 (2) The number of females upon whom the physician performed an abortion without
20 providing to the parent of the minor the notice described in § 34-23A-7; of that
21 number, the number who were emancipated minors, and the numbers from whom
22 each of the exceptions to § 34-23A-7 were applicable;

23 (3) The number of abortions performed upon a female by the physician after receiving
24 judicial authorization to do so without parental notice; ~~and~~

1 (4) The same information described in subdivisions (1) through (3) of this section with
2 respect to females for whom a guardian or conservator has been appointed pursuant
3 to statutes on guardianship or conservatorship because of finding of incompetency;

4 (5) The name of hospital or physician office;

5 (6) The date of report by month, day, and year; and

6 (7) A unique patient number that can be used to link the report to medical report for
7 inspection, clarification, and correction purposes but that cannot, of itself, reasonably
8 lead to the identification of any person obtaining an abortion.

9 Section 5. That § 34-23A-44 be amended to read as follows:

10 34-23A-44. No report made under §§ 34-23A-34 to 34-23A-45, inclusive, may include the
11 name of any female having an abortion. The Department of Health shall take care to ensure that
12 none of the information included in any report required by §§ 34-23A-34 to 34-23A-45,
13 inclusive, including printed records, computerized records, or stored information of any type,
14 can reasonably lead to the identification of any person obtaining an abortion. Any information
15 collected by or under the direction of a physician or psychotherapist for the purpose of
16 completing a report required by §§ 34-23A-34 to 34-23A-45, inclusive, is privileged as a
17 confidential communication under § 19-13-7.

State of South Dakota

SEVENTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2004

455J0376

SENATE ENGROSSED NO. **SB 59** - 01/27/2004

Introduced by: The Committee on State Affairs at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding public records kept
2 by state agencies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-27-28 be amended to read as follows:

5 1-27-28. Terms used in §§ 1-27-29 to 1-27-32, inclusive, mean:

6 (1) "Private entity," any person or entity that is not a public entity as defined by
7 subdivision 3-21-1(2);

8 (2) "State agency," ~~each~~ any association, authority, board, commission, committee,
9 council, department, division, ~~state~~ office, officer, task force, ~~and their officers, legal~~
10 ~~representatives, consultants, or other agents~~ or other agent of the state vested with the
11 authority to exercise any portion of the state's sovereignty. The term does not include
12 the Legislature, the Unified Judicial System, the Public Utilities Commission, the
13 Department of Environment and Natural Resources, any law enforcement agency, or
14 any unit of local government, or joint venture comprised of local governments;

15 (3) "Financial investigation, examination, or audit," any examination conducted by a



1 state agency of a private entity's proprietary information or trade secret information;

2 (4) "Proprietary information," information on pricing, costs, revenue, taxes, market
3 share, customers, and personnel held by private entities and used for that private
4 entity's business purposes;

5 (5) "Trade secret," information, including a formula, pattern, compilation, program,
6 device, method, technique, process, marketing plan, or strategic planning information
7 that:

8 (a) Derives independent economic value, actual or potential, from not being
9 generally known to, and not being readily ascertainable by proper means by,
10 other persons who can obtain economic value from its disclosure or use; and

11 (b) Is the subject of efforts that are reasonable under the circumstances to
12 maintain its secrecy.

13 Section 2. That § 1-27-29 be amended to read as follows:

14 1-27-29. ~~A No state agency which is authorized by law to investigate, examine may disclose~~
15 ~~that it is conducting a financial investigation, examination, or audit the papers, books, records,~~
16 ~~financial condition, or other information held by or concerning of a private entity may not~~
17 ~~disclose that it is conducting such an investigation, examination, or audit while the financial~~
18 ~~investigation, examination, or audit is ongoing, except as provided by §§ 1-27-28 to 1-27-32,~~
19 ~~inclusive § 1-27-31.~~

20 Section 3. That § 1-27-30 be amended to read as follows:

21 1-27-30. All proprietary or trade secret information obtained by a state agency from or
22 concerning ~~the a~~ private entity ~~by the state agency as a result of such an investigation,~~
23 ~~examination, or audit~~ is confidential, except as provided by §§ 1-27-28 to 1-27-32, inclusive
24 § 1-27-31.

1 Section 4. That § 1-27-31 be amended to read as follows:

2 1-27-31. A state agency may ~~not~~ disclose that it is ~~investigating, examining, or auditing~~
3 conducting a financial investigation, examination, or audit of a private entity; and ~~may only~~
4 disclose the information obtained from such an investigation, examination, or audit as follows:

5 (1) To the private entity being investigated, examined, or audited;

6 (2) To those persons whom the private entity has authorized in writing to receive such
7 information;

8 (3) To the officers, employees, or legal representatives of any other state agency which
9 requests the information in writing for the purpose of investigating and enforcing
10 civil or criminal matters. The written request will specify the particular information
11 desired and the purpose for which the information is requested;

12 (4) To any administrative or judicial body if the information is directly related to the
13 resolution of an issue in the proceeding, or pursuant to an administrative or judicial
14 order. However, no person may use a subpoena, discovery, or other applicable
15 statutes to obtain such information;

16 (5) To another state pursuant to an agreement between the State of South Dakota and the
17 other state, but only if the other state agrees to keep the information confidential as
18 set forth in §§ 1-27-28 to 1-27-32, inclusive;

19 (6) To the attorney general, state's attorney, or any state, federal, or local law
20 enforcement officer;

21 (7) To a federal agency pursuant to the provisions of federal law;

22 (8) To the extent necessary to submit any final reports or filings which are otherwise
23 required by law to be prepared or filed;

24 (9) ~~For investigations to protect the natural resources of the state, or~~

1 (10) To comply with federal law, rules, or program delegation requirements; or

2 (11) To the extent necessary to protect the health or welfare of the citizens of this state or
3 nation pursuant to a court order obtained under the same process as orders issued
4 pursuant to § 15-6-65(b).

5 Section 5. That § 1-27-32 be amended to read as follows:

6 1-27-32. Disclosure of information made confidential by §§ 1-27-28 to 1-27-32, inclusive,
7 except as provided in § 1-27-31, is a ~~Class 6 felony~~ Class 1 misdemeanor.

8 Section 6. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 The provisions of this chapter do not supersede more specific provisions regarding public
11 access or confidentiality elsewhere in state or federal law.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

455J0381

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 62** - 01/21/2004

Introduced by: The Committee on State Affairs at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to provide a procedure for handling certain complaints
2 regarding open meeting requirements and to create an open meetings commission.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 If a complaint alleging a violation of chapter 1-25 is made pursuant to § 23A-2-1, the state's
7 attorney shall take one of the following actions:

8 (1) Prosecute the case pursuant to Title 23A;

9 (2) Determine that there is no merit to prosecuting the case. Upon doing so, the state's
10 attorney shall send a copy of the complaint and any investigation file to the attorney
11 general. The attorney general shall use the information for statistical purposes and
12 may publish abstracts of such information, including the name of the government
13 body involved for purposes of public education; or

14 (3) Send the complaint and any investigation file to the South Dakota Open Meetings
15 Commission for further action.



1 Section 2. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 Upon receiving a referral from a state's attorney, the South Dakota Open Meetings
4 Commission shall examine the complaint and investigatory file submitted by the state's attorney
5 and shall also consider signed written submissions by the persons or entities that are directly
6 involved. Based on the investigatory file submitted by the state's attorney and any written
7 responses, the commission shall issue a written determination on whether the conduct violates
8 this chapter, including a statement of the reasons therefor and findings of fact on each issue and
9 conclusions of law necessary for the proposed decision. The final decision shall be made by a
10 majority of the commission members, with each member's vote set forth in the written decision.
11 The final decision shall be filed with the attorney general and shall be provided to the public
12 entity and or public officer involved, the state's attorney, and any person that has made a written
13 request for such determinations. If the commission finds a violation of this chapter, the
14 commission shall issue a public reprimand to the offending official or governmental entity.
15 However, no violation found by the commission may be subsequently prosecuted by the state's
16 attorney or the attorney general. All findings and public censures of the commission shall be
17 public records pursuant to § 1-27-1. This Act is not subject to the provisions of chapter 1-26.

18 Section 3. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 The South Dakota Open Meeting Commission shall be comprised of five state's attorneys
21 appointed by the attorney general. Each commissioner shall serve at the pleasure of the attorney
22 general. A chair of the commission shall be chosen annually from the membership of the
23 commission by a majority of its members.

24 Section 4. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 No member of the commission may participate as part of the commission or vote on any
3 action regarding a violation of this chapter if that member reported or was involved in the initial
4 investigation, is an attorney for anyone who reported or was involved in the initial investigation,
5 or represents or serves as a member of the governmental entity about whom the referral is made.
6 The provisions of this section do not preclude a commission member from otherwise serving
7 on the commission for other matters referred to the commission.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

616J0483

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 112** - 02/23/2004

Introduced by: Senators Bogue, Dennert, McCracken, and Sutton (Dan) and Representatives Peterson (Bill), Bartling, Nesselhuf, Olson (Mel), and Rhoden

1 FOR AN ACT ENTITLED, An Act to require state agencies promulgating rules pursuant to the
2 Administrative Procedures Act to provide an impact statement on small business.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-26-1 be amended by adding thereto a NEW SUBDIVISION to read as
5 follows:

6 "Small business," a business entity that employs twenty-five or fewer full-time employees.

7 Section 2. That chapter 1-26 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 An agency shall, when submitting any proposed rule that will have a direct impact on small
10 business, prepare an impact statement that includes the following:

11 (1) A narrative explanation in plain, easy-to-read language of the effect of the rule on
12 small business, the basis for its enactments, and why the rule is needed;

13 (2) An identification and estimate of the number of small businesses subject to the
14 proposed rule;

15 (3) The projected reporting and recordkeeping required for compliance with the



1 proposed rule, including the types of professional skills necessary for preparation of
2 the report or record;

3 (4) A statement of the probable effect on impacted small business; and

4 (5) A description of any less intrusive or less costly alternative methods of achieving the
5 purpose of the proposed rule.

6 An agency is only required to use readily available information and existing resources to
7 prepare the impact statement.

8 Section 3. That § 1-26-4 be amended to read as follows:

9 1-26-4. The following procedure shall be complied with prior to the adoption, amendment,
10 or repeal of any rule, except an emergency rule:

11 (1) An agency shall serve a copy of a proposed rule and any publication described in
12 § 1-26-6.6 upon the departmental secretary, bureau commissioner, or constitutional
13 officer of the department to which it is attached;

14 (2) Fifteen days after the service required by subdivision (1) or upon receiving the
15 written approval of that officer to proceed, whichever comes first, and twenty days
16 before the hearing, the agency shall serve the director with a copy of the proposed
17 rules, a copy of any publication described in § 1-26-6.6, a copy of the fiscal note
18 described in § 1-26-4.2, a copy of the impact statement on small business described
19 in section 2 of this Act, and a copy of the notice of hearing required by § 1-26-4.1.

20 Any publication described in § 1-26-6.6 shall be returned to the agency upon
21 completion of the director's review and retained by the agency. Also, twenty days
22 before the hearing, the agency shall serve the Bureau of Finance and Management
23 with a copy of the proposed rules, a copy of the fiscal note described in § 1-26-4.2,
24 a copy of the impact statement on small business described in section 2 of this Act,

1 and a copy of the notice of hearing required by § 1-26-4.1;

2 (3) The agency shall publish the notice of hearing in the manner prescribed by
3 § 1-26-4.1, at least twenty days before the hearing;

4 (4) The agency shall afford all interested persons reasonable opportunity to submit data,
5 opinions, or arguments, either orally or in writing, or both, at a hearing held for that
6 purpose. The hearing may be continued from time to time until its business has been
7 completed. The agency shall keep minutes of the hearing. A majority of the members
8 of any board or commission authorized to pass rules must be present during the
9 course of the hearing required by this subdivision;

10 (5) For a period of ten days after the hearing, the agency shall accept written comments
11 regarding the proposed rule, unless the entity promulgating the rule is a part-time
12 citizen board, commission, committee, task force, or other multiperson decision
13 maker, in which case the record of written comments shall be closed at the
14 conclusion of the public hearing. However, the hearing may be specifically continued
15 for the purpose of taking additional comments;

16 (6) After the written comment period, the agency shall fully consider all written and oral
17 submissions regarding the proposed rule. A proposed rule may be modified or
18 amended at this time to include or exclude matters which were described in the
19 notice of hearing;

20 (7) After reviewing the proposed rule, the director shall advise the agency of any
21 recommended corrections to the proposed rule;

22 (8) If the agency does not concur with any recommendation of the director, the agency
23 shall appeal the recommended correction to the Interim Rules Review Committee for
24 appropriate action; and

1 (9) The agency shall, at least five days prior to the time set for the agency to appear
2 before the committee to present the rules, serve the minutes of the hearing, a
3 complete record of written comments, and a corrected copy of the rules on the
4 members of the Interim Rules Review Committee.

5 The time periods specified in this section may be extended by the agency. The requirement
6 to serve the committee in subdivision (9) may be waived by the committee chair if the agency
7 presents sufficient reasons to the committee chair that the agency is unable to comply with the
8 time limit. The waiver may not be granted solely for the convenience of the agency.

9 Section 4. That chapter 1-26 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 The provisions of section 2 of this Act do not apply to the Game, Fish and Parks
12 Commission.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

493J0632

HOUSE HEALTH AND HUMAN SERVICES

COMMITTEE ENGROSSED NO. **SB 147** - 02/20/2004

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Moore and Olson (Ed) and Representatives Michels and Hunhoff

1 FOR AN ACT ENTITLED, An Act to define the term, autopsy.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 34-25-1.1 be amended by adding thereto a NEW SUBDIVISION to read
4 as follows:

5 "Autopsy," the post mortem dissection and examination of a dead body, including fetal
6 tissue older than twenty-four weeks.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

479J0633

SENATE ENGROSSED NO. **SB 150** - 02/12/2004

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Moore, Bogue, and Brown and Representatives Peterson (Bill), Michels, and Olson (Mel)

1 FOR AN ACT ENTITLED, An Act to appropriate money to enhance the quality of education
2 in the state.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That section 11 of chapter 2 of the 2003 Session Laws be amended to read as
5 follows:

6		GENERAL	FEDERAL	OTHER	TOTAL
		FUNDS	FUNDS	FUNDS	FUNDS
7	DEPARTMENT OF EDUCATION				
8	After National Board Certified Teachers, insert:				
9	K-12 Schools, School & Public Lands Distribution				
10	Personal Services	\$0	\$0	\$0	\$0
11	Operating Expenses	\$1,845,271	\$0	\$0	\$1,845,271
12	Total	\$1,845,271	\$0	\$0	\$1,845,271
13	F.T.E.				0.0

14 Adjust all totals accordingly.

15 Section 2. The funds appropriated in section 1 of this Act shall be distributed by the



1 secretary of the Department of Education who shall calculate each school district's share of this
2 money as follows:

3 (1) Divide each school district's average daily membership by the statewide average
4 daily membership;

5 (2) Multiply the quotient by the amount of money available for distribution.

6 Section 3. That section 11 of chapter 2 of the 2003 Session Laws be amended to read as
7 follows:

8 DEPARTMENT OF EDUCATION

9 Post-Secondary Vocational Education

10 Delete "\$15,752,326" and insert "\$16,102,326"

11 Adjust all totals accordingly.

12 Section 4. That section 13 of chapter 2 of the 2003 Session Laws be amended to read as
13 follows:

	GENERAL	FEDERAL	OTHER	TOTAL
	FUNDS	FUNDS	FUNDS	FUNDS
15 BOARD OF REGENTS				
16 After Regents System Office, insert:				
17 South Dakota Scholarship Program				
18 Personal Services	\$0	\$0	\$0	\$0
19 Operating Expenses	\$650,000	\$0	\$0	\$650,000
20 Total	\$650,000	\$0	\$0	\$650,000
21 F.T.E.				0.0

22 Adjust all totals accordingly.

23 Section 5. The funds appropriated in section 4 of this Act shall be awarded for the use of
24 college freshmen that are newly enrolled in the academic year 2004-2005.

1 Section 6. That section 30 of chapter 2 of the 2003 Session Laws be amended to read as
2 follows:

3 Section 30. The state treasurer shall transfer to the state general fund money from the
4 education enhancement trust fund, the amount identified by notice of the state investment
5 officer pursuant to § 4-5-29.2, for enhancement of technology in schools, state aid to general
6 education ~~and~~, state aid to special education, K-12 schools, school and public lands distribution,
7 postsecondary vocational education, and the South Dakota scholarship program.

8 Section 7. General funds appropriated by this Act which are unspent at the end of fiscal year
9 2004 shall be reappropriated to fiscal year 2005.

10 Section 8. This Act is effective June 20, 2004.

State of South Dakota

SEVENTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2004

753J0756

SENATE ENGROSSED NO. **SB 169** - 02/17/2004

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Bogue, Apa, Brown, Duniphan, Jaspers, Kleven, Koskan, LaPointe, McCracken, Napoli, and Olson (Ed) and Representatives Rave, Dykstra, Hackl, Juhnke, Klaudt, LaRue, Lintz, Peterson (Bill), Rhoden, and Teupel

1 FOR AN ACT ENTITLED, An Act to provide a sparsity factor when distributing certain school
2 district revenue.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-13-10.1 be amended to read as follows:

5 13-13-10.1. Terms used in this chapter mean:

6 (1) "Average daily membership," the average number of resident and nonresident
7 kindergarten through twelfth grade pupils enrolled in all schools operated by the
8 school district during the previous regular school year, minus average number of
9 pupils for whom the district receives tuition, except pupils described in subdivision
10 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42 and plus the
11 average number of pupils for whom the district pays tuition;

12 (1A) Nonresident students who are in the care and custody of the Department of Social
13 Services, the Unified Judicial System, the Department of Corrections, or other state
14 agencies and are attending a public school may be included in the average daily



membership of the receiving district when enrolled in the receiving district. When counting a student who meets these criteria in its general enrollment average daily membership, the receiving district may begin the enrollment on the first day of attendance. The district of residence prior to the custodial transfer may not include students who meet these criteria in its general enrollment average daily membership after the student ceases to attend school in the resident district;

(2) "Adjusted average daily membership," calculated as follows:

- (a) For districts with an average daily membership of two hundred or less, multiply 1.2 times the average daily membership;
- (b) For districts with an average daily membership of less than six hundred, but greater than two hundred, raise the average daily membership to the 0.8293 power and multiply the result times 2.98;
- (c) For districts with an average daily membership of six hundred or more, multiply 1.0 times their average daily membership;

(2A) "Sparse school district," a school district which: levies ad valorem taxes at the maximum rates allowed pursuant to § 10-12-42; has an average daily membership of less than six hundred; has a geographical area of more than five hundred square miles; and has an average daily membership per square mile of 0.5 or less;

(2B) "Sparsity average daily membership," calculated as follows:

- (a) For sparse school districts, divide the average daily membership by the area of the school district in square miles;
- (b) If the result of subsection (a) of this subdivision is 0.50 or less, multiply the quotient obtained in subsection (a) times negative 0.25;
- (c) Add 0.125 to the result of subsection (b) of this subdivision; and

1 (d) Multiply the result of subsection (c) of this subdivision times the average daily
2 membership;

3 (2C) No school district which has an average daily membership of six hundred or more
4 as of July 1, 2004, may qualify as a sparse school district in subsequent years;

5 (3) "Index factor," is the annual percentage change in the consumer price index for urban
6 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
7 the United States Department of Labor for the year before the year immediately
8 preceding the year of adjustment or three percent, whichever is less;

9 (4) "Per student allocation," for school fiscal year 2004 is \$3,967.88. Each school fiscal
10 year thereafter, the per student allocation is the previous fiscal year's per student
11 allocation increased by the index factor;

12 (5) "Local need," the per student allocation multiplied by the sum of adjusted average
13 daily membership plus the sparsity average daily membership;

14 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by
15 applying the levies established pursuant to § 10-12-42;

16 (7) "General fund balance," the unreserved fund balance of the general fund, less general
17 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers
18 out of the general fund for the previous school fiscal year;

19 (8) "General fund balance percentage," is a school district's general fund balance divided
20 by the school district's total general fund expenditures for the previous school fiscal
21 year, the quotient expressed as a percent;

22 (9) "General fund base percentage," is the general fund balance percentage as of June 30,
23 2000. However, the general fund base percentage can never increase and can never
24 be less than twenty percent;

1 (10) "Allowable general fund balance," the fund base percentage multiplied by the
2 district's general fund expenditures in the previous school fiscal year;

3 (11) "Imputed interest rate," the average prime rate for the preceding fiscal year minus 2.5
4 percentage points;

5 (12) "General fund exclusions," revenue a school district has received from the imposition
6 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received
7 from gifts, contributions, grants, or donations; revenue a school district has received
8 under the provisions of §§ 13-6-92 to 13-6-96, inclusive; and any revenue in the
9 general fund set aside for a noninsurable judgment.

10 Section 2. That chapter 13-13 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 Notwithstanding the provisions of § 13-13-10.1, the adjusted average daily membership of
13 a sparse school district with an average daily membership of more than fifty and less than one
14 hundred thirty is one hundred fifty-six.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0702

SENATE EDUCATION COMMITTEE ENGROSSED NO. **SB 205** - 02/05/2004

Introduced by: The Committee on Education at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to provide for the distribution of certain money
2 appropriated as state aid.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The secretary of the Department of Education shall distribute any money, not to
5 exceed seven million three hundred seven thousand eight hundred ninety-six dollars
6 (\$7,307,896), from state aid which is not obligated or expended at the end of the fiscal year.

7 Section 2. For purposes of this Act, average daily membership means average daily
8 membership as defined in § 13-13-10.1 for school fiscal year 2003.

9 Section 3. Each school district's share of the distribution provided for in section 1 of this Act
10 is determined according to the following calculations:

11 (1) Divide each school district's average daily membership by the statewide average
12 daily membership;

13 (2) Multiply the quotient obtained by calculation (1) by the total amount of money
14 identified for distribution pursuant to section 1 of this Act.

15 Section 4. Any funds from state aid which are unspent at the end of fiscal year 2004 shall



1 be carried over to fiscal year 2005.

2 Section 5. This Act is effective on June 14, 2004.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0709

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **SB 206** - 02/23/2004

Introduced by: The Committee on Education at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to increase the per student allocation in the state aid to
2 education formula.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-13-10.1 be amended to read as follows:

5 13-13-10.1. Terms used in this chapter mean:

6 (1) "Average daily membership," the average number of resident and nonresident
7 kindergarten through twelfth grade pupils enrolled in all schools operated by the
8 school district during the previous regular school year, minus average number of
9 pupils for whom the district receives tuition, except pupils described in subdivision
10 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42 and plus the
11 average number of pupils for whom the district pays tuition;

12 (1A) Nonresident students who are in the care and custody of the Department of Social
13 Services, the Unified Judicial System, the Department of Corrections, or other state
14 agencies and are attending a public school may be included in the average daily
15 membership of the receiving district when enrolled in the receiving district. When



counting a student who meets these criteria in its general enrollment average daily membership, the receiving district may begin the enrollment on the first day of attendance. The district of residence prior to the custodial transfer may not include students who meet these criteria in its general enrollment average daily membership after the student ceases to attend school in the resident district;

(2) "Adjusted average daily membership," calculated as follows:

(a) For districts with an average daily membership of two hundred or less, multiply 1.2 times the average daily membership;

(b) For districts with an average daily membership of less than six hundred, but greater than two hundred, raise the average daily membership to the 0.8293 power and multiply the result times 2.98;

(c) For districts with an average daily membership of six hundred or more, multiply 1.0 times their average daily membership;

(3) "Index factor," is the annual percentage change in the consumer price index for urban wage earners and clerical workers as computed by the Bureau of Labor Statistics of the United States Department of Labor for the year before the year immediately preceding the year of adjustment or three percent, whichever is less;

(4) "Per student allocation," for school fiscal year ~~2004~~ 2005 is ~~\$3,967.88~~ \$4,096.48. Each school fiscal year thereafter, the per student allocation is the previous fiscal year's per student allocation increased by the index factor;

(5) "Local need," the per student allocation multiplied by the adjusted average daily membership;

(6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by applying the levies established pursuant to § 10-12-42;

- 1 (7) "General fund balance," the unreserved fund balance of the general fund, less general
2 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers
3 out of the general fund for the previous school fiscal year;
- 4 (8) "General fund balance percentage," is a school district's general fund balance divided
5 by the school district's total general fund expenditures for the previous school fiscal
6 year, the quotient expressed as a percent;
- 7 (9) "General fund base percentage," is the general fund balance percentage as of June 30,
8 2000. However, the general fund base percentage can never increase and can never
9 be less than twenty percent;
- 10 (10) "Allowable general fund balance," the fund base percentage multiplied by the
11 district's general fund expenditures in the previous school fiscal year;
- 12 (11) "Imputed interest rate," the average prime rate for the preceding fiscal year minus 2.5
13 percentage points;
- 14 (12) "General fund exclusions," revenue a school district has received from the imposition
15 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received
16 from gifts, contributions, grants, or donations; revenue a school district has received
17 under the provisions of §§ 13-6-92 to 13-6-96, inclusive; and any revenue in the
18 general fund set aside for a noninsurable judgment.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0235

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **SB 213** - 02/23/2004

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions regarding the reduction in state
2 aid to education based on school district general fund balances.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-13-10.1 be amended to read as follows:

5 13-13-10.1. Terms used in this chapter mean:

6 (1) "Average daily membership," the average number of resident and nonresident
7 kindergarten through twelfth grade pupils enrolled in all schools operated by the
8 school district during the previous regular school year, minus average number of
9 pupils for whom the district receives tuition, except pupils described in subdivision
10 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42 and plus the
11 average number of pupils for whom the district pays tuition;

12 (1A) Nonresident students who are in the care and custody of the Department of Social
13 Services, the Unified Judicial System, the Department of Corrections, or other state
14 agencies and are attending a public school may be included in the average daily
15 membership of the receiving district when enrolled in the receiving district. When



counting a student who meets these criteria in its general enrollment average daily membership, the receiving district may begin the enrollment on the first day of attendance. The district of residence prior to the custodial transfer may not include students who meet these criteria in its general enrollment average daily membership after the student ceases to attend school in the resident district;

(2) "Adjusted average daily membership," calculated as follows:

(a) For districts with an average daily membership of two hundred or less, multiply 1.2 times the average daily membership;

(b) For districts with an average daily membership of less than six hundred, but greater than two hundred, raise the average daily membership to the 0.8293 power and multiply the result times 2.98;

(c) For districts with an average daily membership of six hundred or more, multiply 1.0 times their average daily membership;

(3) "Index factor," is the annual percentage change in the consumer price index for urban wage earners and clerical workers as computed by the Bureau of Labor Statistics of the United States Department of Labor for the year before the year immediately preceding the year of adjustment or three percent, whichever is less;

(4) "Per student allocation," for school fiscal year 2004 is \$3,967.88. Each school fiscal year thereafter, the per student allocation is the previous fiscal year's per student allocation increased by the index factor;

(5) "Local need," the per student allocation multiplied by the adjusted average daily membership;

(6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by applying the levies established pursuant to § 10-12-42;

1 (7) "General fund balance," the unreserved fund balance of the general fund, less general
2 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers
3 out of the general fund for the previous school fiscal year;

4 (8) "General fund balance percentage," is a school district's general fund balance divided
5 by the school district's total general fund expenditures for the previous school fiscal
6 year, the quotient expressed as a percent;

7 ~~(9) "General fund base percentage," is the general fund balance percentage as of June 30,~~
8 ~~2000. However, the general fund base percentage can never increase and can never~~
9 ~~be less than twenty percent;~~

10 ~~(10) "Allowable general fund balance," the fund base percentage multiplied by the~~
11 ~~district's general fund expenditures in the previous school fiscal year;~~

12 ~~(11) "Imputed interest rate," the average prime rate for the preceding fiscal year minus 2.5~~
13 ~~percentage points;~~

14 ~~(12) "General fund exclusions," revenue a school district has received from the imposition~~
15 ~~of the excess tax levy pursuant to § 10-12-43; revenue a school district has received~~
16 ~~from gifts, contributions, grants, or donations; revenue a school district has received~~
17 ~~under the provisions of §§ 13-6-92 to 13-6-96, inclusive; and any revenue in the~~
18 ~~general fund set aside for a noninsurable judgment.~~

19 Section 2. That § 13-13-73.2 be repealed.

20 ~~13-13-73.2. A school district's state aid for general education as calculated pursuant to~~
21 ~~§ 13-13-73 shall be reduced by the following calculation:~~

22 ~~(1) Subtract the allowable general fund balance from the general fund balance. If the~~
23 ~~result is less than zero, (1) equals zero;~~

24 ~~(2) Determine the lower of the general fund base percentage or the general fund balance~~

1 percentage;

2 ~~— (3) Subtract twenty percent (0.2) from the result of (2). If the result is less than zero, (3)~~

3 ~~equals zero;~~

4 ~~— (4) Multiply the result of (3) by the district's general fund expenditures in the previous~~

5 ~~school fiscal year;~~

6 ~~— (5) Multiply the result of (4) by the imputed interest rate;~~

7 ~~— (6) Add the result of (1) and the result of (5).~~

8 Section 3. That § 13-13-73.3 be repealed.

9 ~~— 13-13-73.3. The secretary of education and cultural affairs shall determine the reduction in~~
10 ~~state aid to education pursuant to § 13-13-73.2. The secretary of education and cultural affairs~~
11 ~~shall distribute the amount of money so determined to school districts that received state aid~~
12 ~~pursuant to chapter 13-13 on a pro rata basis according to the district's average daily~~
13 ~~membership compared to the total average daily membership of all districts eligible for this~~
14 ~~distribution.~~

15 Section 4. That § 13-13-73.4 be repealed.

16 ~~— 13-13-73.4. The secretary of the Department of Education shall promulgate rules, pursuant~~
17 ~~to chapter 1-26, that calculate exclusions for revenue received from opting out of the property~~
18 ~~tax limitations such that all expenditures shall be credited to formula revenue and unreserved~~
19 ~~general fund balance from the preceding fiscal year prior to any credits against opt-out revenue.~~

20 Section 5. That § 13-13-76 be repealed.

21 ~~— 13-13-76. There is hereby created the Excess General Fund Oversight Board within the~~
22 ~~Department of Education. The board shall consist of five members, appointed by the Governor.~~
23 ~~The Excess General Fund Oversight Board may exempt a school district from the provisions~~
24 ~~of § 13-13-73.2 if a school district can demonstrate to the Excess General Fund Oversight Board~~

1 ~~that its general fund balance percentage is the result of special circumstances.~~

2 Section 6. The secretary of the Department of Education shall reduce the payments for state
3 aid to education calculated in this chapter by the dollar amount any school district's general fund
4 balance exceeds a general fund balance percentage of forty percent.